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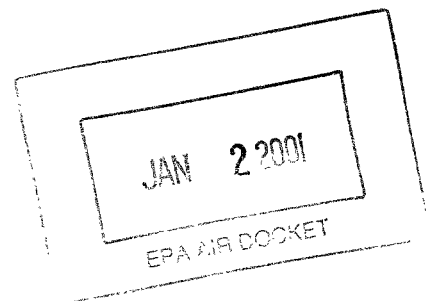
Revised document: Published version

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~~Strikeout~~, Blue RGB(0,0,255).

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL-]

Protection of Stratospheric Ozone: Incorporation of Clean Air Act Amendments for Reductions in Class I, Group VI Controlled Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: ~~Notice of p~~Proposed rulemakingRule.

SUMMARY: With this action, EPA is proposing revisions to the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer under the authority of Title VI of the Clean Air Act Amendments of 1990 (CAA or the Act). We are proposing these revisions to implement recent changes to the CAA (Oct. 21, 1998), which direct EPA to conform the U.S. methyl bromide phasedown schedule to the schedule for industrialized nations under the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). Specifically, today's proposed amendments reflect the Protocol's reductions in the production and consumption of class I, Group VI controlled substances (methyl bromide) for the 2001 calendar year and subsequent calendar years, as follows: beginning January 1, 2001, a 50 percent reduction in baseline levels; beginning January 1, 2003, a 70 percent reduction in baseline levels; and, beginning January 1, 2005, the complete phaseout of class I, Group VI controlled substances.—

In the "Rules and Regulations" section of today's Federal Register, we are amending the phaseout schedule as a direct final rule without prior proposal because we view this as a noncontroversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and the rule will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. EPA reiterates that the phasedown and phaseout levels and dates are statutorily required, and that it therefore has no discretion to alter the schedule.

DATES: Written comments- must be received on or before **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**, unless a public hearing is requested. If a public hearing takes place, it will be scheduled for **[INSERT DATE 15 DAYS AFTER PUBLICATION DATE IN THE FEDERAL REGISTER]**, after which comments must be received on or before 45 days after the hearing. Any party requesting a public hearing must notify the contact person listed below by 5pm

Eastern Standard Time on **[INSERT DATE 7 DAYS AFTER PUBLICATION DATE IN THE FEDERAL REGISTER]**. After that time, interested parties may call EPA's Stratospheric Ozone Information Hotline at 1-800-296-1996 to inquire with regard to whether a hearing will be held, as well as the time and place of such a hearing.

ADDRESSES: -Comments- should be submitted in duplicate (two copies) to: Air Docket No. A-2000-24, U.S. Environmental Protection Agency, 2000 Pennsylvania Ave., NW., Room M-1500, Washington, D.C. 20460. Inquiries regarding a public hearing should be directed to the Stratospheric Ozone Protection Information Hotline at 1-800-296-1996.

Materials relevant to this proposed rulemaking are contained in Public Docket No. A-2000-24. The docket is located in room M-1500, Waterside Mall (Ground Floor), at the above address. The materials may be inspected from 8am until 5:30pm, Monday through Friday. We may charge a reasonable fee for copying docket materials.

FOR FURTHER INFORMATION CONTACT:- The Stratospheric Ozone Information Hotline at 1-800-296-1996 between the hours of 10am and 4pm Eastern Standard Time, or Amber Moreen, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 401 M Street, S.W., Washington, D.C., 20460,

(202) 564-9295.

SUPPLEMENTARY INFORMATION: We are proposing these revisions to reflect changes directly mandated by the statutory language established by Congress in response to the methyl bromide phaseout schedule in the *Montreal Protocol on Substances that Deplete the Ozone Layer* (Protocol). For further information, please see the information provided in the direct final action that is located in the "Rules and Regulations" section of this Federal Register publication. ~~For ease of reference, the table of contents for the direct final rule published in the Final Rules section of this Federal Register is as follows:~~

~~Table of Contents~~

- ~~I What is the Legislative and Regulatory Background of the Phaseout Regulations for Ozone Depleting Substances?~~
- ~~II What is Methyl Bromide?~~
- ~~III What is the Regulatory Background Relating Specifically to Methyl Bromide?~~
- ~~IV How is EPA Phasing Out Methyl Bromide?~~
 - ~~a. What does the Protocol say about the phaseout of methyl bromide?~~
 - ~~b. What is the legal authority for phasing out methyl bromide?~~
 - ~~c. What are today's phasedown changes?~~
- ~~V What Are the Additional Changes Necessary to Facilitate the New Phaseout Schedule?~~
- ~~VI What Exemptions Does the Montreal Protocol Provide Beginning in 2005?~~
 - ~~a. What is the Montreal Protocol authority for granting a critical use exemption after the phaseout?~~
 - ~~b. What is the CAA legal authority for implementing the critical use exemption?~~
 - ~~c. How will the U.S. incorporate the critical use exemption?~~
 - ~~d. What is the Protocol authority for granting an emergency use exemption?~~
 - ~~e. What is the CAA legal authority for implementing the emergency use exemption?~~

- ~~f. How will the Decision affect emergency agricultural uses in the U.S.?~~
- ~~VII Are the Existing Regulations being Amended to Reflect the Critical and Emergency Use Provisions [82.3 (Definitions) and Section 82.7]?~~
- ~~VIII Will Production Allowances be Available for Export to Developing Countries? (Section 82.9)?~~
- ~~a. What does the Protocol say about allowances for developing countries?~~
- ~~b. How did the U.S. provide for Article 5 allowances?~~
- ~~IX How do Today's Changes Affect the Economic Impact of the Phaseout?~~
- ~~X What are the Supporting Analyses?~~

What are the Supporting Analyses?

a. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), ~~P.~~Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the

rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burden some alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's proposed rule contains ~~no~~ federal mandates (under the regulatory provisions of the Title II of the UMRA) for ~~state, local, or tribal governments or the private sector.~~ However, the rule proposes to implements mandates specifically and explicitly set forth by the Congress in section 604(h) of the CAA, as added by ~~s~~Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105-277), without the exercise of any policy discretion by EPA. ~~in~~

~~particular~~Specifically, this rule proposes to implements the
directive in section 604(h) of the CAA to promulgate a methyl
bromide phaseout schedule that is in accordance with the schedule
under the Montreal Protocol. ~~Thus, today's proposed rule is not~~
~~subject to the requirements of sections 202 or 205 of the UMRA.~~
~~In any event,~~ EPA has determined that this proposed rule does not
contain a Federal mandate that may result in expenditures of \$100
million or more for State, local, and tribal governments, in the
aggregate, or the private sector in any one year.

~~Compared to the 1993 original analysis for establishing the~~
~~2001 phaseout now contained in the regulations, this rule reduces~~
~~the projected costs resulting from the 2001 phaseout in the~~
~~current mandate by \$12 to \$78 million. Furthermore, the net~~
~~benefits of this~~ Because this rule proposes to extend the
current phaseout, the rule reduces costs. Thus, today's proposed
rule range between \$141 and \$207 million is not subject to the
requirements of sections 202 or 205 of the UMRA.

We determined that this proposed rule contains no regulatory
requirements that might significantly or uniquely affect small
governments; therefore, we are not required to develop a plan
with regard to small governments under section 203. Finally,
because this proposed rule does not contain a significant
intergovernmental mandate, the Agency is not required to develop
a process to obtain input from elected state, local, and tribal

officials under section 204.

b. Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et. seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as:

(1) a small business that is identified by the Standard Industrial Classification (SIC) Code in the Table below. The size standards described in this section apply to all Small Business Administration (SBA) programs unless otherwise specified. The size standards themselves are expressed either in number of employees or annual receipts in millions of dollars, unless otherwise specified. The number of employees or annual receipts indicates the maximum allowed for a concern and its affiliates to be considered small.

Type of Enterprise	SIC Code/Division	Size Standard
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Industrial Organic Chemicals	2813	1,000
Wholesale Trade	Division F	100

(2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and

(3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant impact on a substantial number of small entities. Today's proposed rule will not impose any requirements on small entities, as it proposes to regulate large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances.

c. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether this regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines a "significant" regulatory action as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of \$100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this an "economically significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

~~d. Plain Language~~

~~Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. We invite your comments on how to make this rule~~

~~easier to understand. For example:~~

- ~~II Have we organized the material to suit your needs?~~
- ~~II Are the requirements in the rule clearly stated?~~
- ~~II Does the rule contain technical language or jargon that isn't clear?~~
- ~~II Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?~~
- ~~II Would more (but shorter) sections be better?~~
- ~~II Could we improve clarity by adding tables, lists, or diagrams?~~
- ~~II What could we do to make the rule easier to understand?~~

~~e~~

d. Applicability of E.O. Executive Order 13045 - Children's Health Protection

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects

of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets ~~E.O.~~Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5-501 of the Order has the potential to influence the regulation. This rule is not subject to ~~E.O.~~Executive Order 13045 because it implements a Congressional directive to phase out production and import¹ of methyl bromide in accordance with the schedule under the Protocol.

fe. Paperwork Reduction Act

This action does not add any information collection requirements or increase burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The Office of Management and Budget (OMB) previously approved the information collection requirements contained in the final rule promulgated on May 10, 1995, and assigned OMB control number 2060-0170 (EPA ICR No. 1432.167).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or

¹Because the formula for "consumption" is production + import - export, the phrase "production and import", in effect, also includes consumption.

provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

g.f. *Executive Order 13132 (Federalism)*

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), -requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."—

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule regulates large, multinational corporations that either produce, import or export class I, group VI ozone-depleting substances. It implements mandates specifically and explicitly set forth by the Congress in section 604(h) of the CAA, as added by ~~s~~Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105-277), without the exercise of any policy discretion by EPA. Thus, -Executive Order 13132 does not apply to this proposed rule.

hg. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by

statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies or matters that significantly or uniquely affect their communities."

Today's rule proposes to implement requirements specifically set forth by Congress in section 604(h) of the CAA, as added by ~~§~~Section 764 of the 1999 Omnibus Consolidated Emergency Supplemental Appropriations Act (Public Law No. 105-277), without the exercise of any discretion by EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

~~th~~. The National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995

("NTTAA"), ~~Pub~~Public Law No. 104-113, ~~§12~~Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with-

applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.